

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 15-14234-RWZ

JUAN PAGAN

v.

OSVALDO VIDAL

ORDER

April 14, 2017

ZOBEL, S.D.J.

The judgment issued on April 3, 2017, is amended to add the following:

A certificate of appealability is issued with regard to the public trial violation and the ineffective assistance of counsel claim as it relates thereto. “A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “To make a ‘substantial showing, ‘a petitioner must demonstrate that ‘reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.’” Forte v. Medeiros, No. 14-cv-40173-TSH, 2017 WL 937713, at *8 (D. Mass. Mar. 9, 2017) (alteration in original) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). Here, the question “whether a defendant asserting ineffective assistance that results in a structural error must, in addition to demonstrating deficient performance, show that he was prejudiced by counsel's ineffectiveness,” is pending before the Supreme Court in

Weaver v. Massachusetts, No. 16-240. A certificate of appealability is ISSUED as to this issue.

April 14, 2017

DATE

/s/Rya W. Zobel

RYA W. ZOBEL
SENIOR UNITED STATES DISTRICT JUDGE